

### EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Nish Patel Limited Recognition No. L0281 on behalf of John Griffith Reg. No. 44137 on 7/10/2009.

### *Election/Restrictions*

At the outset, this application contains claims directed to the following patentably distinct species: Species I and II.

Species	Figures	Claims
I	47 and 49	1, 3-10, 12-18, 33 and 35-41
II	48 and 50	19, 21-26, 28-32, 42, and 44-48

The species are independent or distinct because claims to the different species recite the mutually exclusive characteristics of such species. **Species I** is directed to an apparatus and method that subtracts a jackpot wager on a secondary game from a player's available credit and adds a progressive jackpot wager to a progressive jackpot pool when a player's wager on a primary game is greater than or equal to a minimum

wager. In contrast, **Species II** is directed to a different apparatus and method that accepts a player's progressive wager input, subtracts the player's progressive wager on the primary game from a player's available credit after receiving the player's progressive wager input and adds the progressive jackpot wager to a progressive jackpot pool when the progressive jackpot wager is subtracted from the player's available credit. In addition, these species are not obvious variants of each other based on the current record.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, there are no generic claims.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species.

MPEP § 809.02(a).

There is an examination and search burden for these patentably distinct species due to their mutually exclusive characteristics. The species require a different field of search (e.g., searching different classes/subclasses or electronic resources, or employing different search queries); and/or the prior art applicable to one species would not likely be applicable to another species; and/or the species are likely to raise different non-prior art issues under 35 U.S.C. 101 and/or 35 U.S.C. 112, first paragraph.

**Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species to be examined** even though the requirement may be traversed (37 CFR 1.143) **and (ii) identification of the claims encompassing the elected species**, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

The election of the species may be made with or without traverse. To preserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the election of species requirement, the election shall be treated as an election without traverse. Traversal must be presented at the time of election in order to be considered timely. Failure to timely traverse the requirement will result in the loss of right to petition under 37 CFR 1.144. If claims are added after the election, applicant must indicate which of these claims are readable on the elected species.

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the species unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other species.

During a telephone conversation with Attorney/Agent Nish Patel on 7/10/2009, a provisional election was made without traverse to prosecute the invention of Species I,

claims 1, 3-10, 12-18, 33 and 35-41. Affirmation of this election is not necessary to be made by applicant in replying to this Office action since applicant has withdrawn claims 19, 21-26, 28-32, 42, and 44-48 from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention, because applicant has agreed to cancel claims 19, 21-26, 28-32, 42, and 44-48 and since claims 1, 3-10, 12-18, 33 and 35-41 are being allowed.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

The application has been amended as follows:

Claims 19, 21-26, 28-32, 42, and 44-48 have been cancelled.

### ***Reasons for Allowance***

The following is an examiner's statement of reasons for allowance:

The closest prior art for the features of the claimed invention are Marnell, II (US Patent 5,393,057; hereinafter Marnell), Olsen (US Patent 6,110,043), and Vancura et al. (US Patent 7,297,059; hereinafter Vancura).

However, Marnell alone or in combination with Olsen and Vancura does not disclose an apparatus and method of operating the apparatus in a multi-player wagering game that subtracts a jackpot wager on a secondary game from a player's available credit and adds a progressive jackpot wager to a progressive jackpot pool when a player's wager on a primary game is greater than or equal to a minimum wager. Thus, the claimed invention is not anticipated by nor obvious over the closest prior art.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ARTHUR O. HALL whose telephone number is (571)270-1814. The examiner can normally be reached on Mon - Fri, 8:00am - 5:00 pm, Alt Fri, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Vo can be reached on (571) 272-4690. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Dmitry. Suhol/  
Supervisory Patent Examiner, Art  
Unit 3714

/A. O. H./  
Examiner, Art Unit 3714